

## **Item LEG05-05 Response Form**

**Title:** Legislative Proposal: Change of Name (amend Code of Civ. Proc., §§ 1275–1279.5)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

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\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Romunda Price,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

<b>DEADLINE FOR COMMENT: 5:00 p.m. Friday, June 20, 2005</b>
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.  
All comments will become part of the public record of the council's action..*

### Invitation to Comment (LEG05-05)

Title	Legislative Proposal: Change of Name (amend Code of Civ. Proc., §§ 1275–1279.5)
Summary	This is a proposal for the Judicial Council to sponsor legislation to amend Code of Civil Procedure sections 1275–1279.5 to improve the procedures for, and to clarify the law on, changing a person’s name.
Source	Civil and Small Claims Advisory Committee Hon. Elihu M. Berle, Chair
Staff	Patrick O’Donnell, Committee Counsel, 415-865-7665 patrick.o’donnell@jud.ca.gov  Daniel Pone, Senior Attorney, Office of Governmental Affairs, 916-323-3121, <a href="mailto:daniel.pone@jud.ca.gov">daniel.pone@jud.ca.gov</a>
Discussion	<p>Code of Civil Procedure sections 1275–1279.5 provide procedures for changing a person’s name. These statutes would be amended to improve the procedures for changing names and to clarify the law.</p> <p>First, current section 1276(a) contains general provisions for all name change applications. However, at the end of (a), there is a requirement that, if neither parent has signed a petition for change of name, the petition shall provide the name and address of the parents or, if neither parent is living, of near relatives. This provision does not expressly state that it is limited to minors. It would be clearer if this requirement were placed in a new subdivision (b) and would state that the requirement applies “if the person whose name is to be changed is under 18 years of age.” This change would be consistent with the rest of the statutory scheme. (See current Code of Civil Procedure section 1276(b) (requiring information about persons whose names are to be changed if they are under 18 years of age).)</p> <p>Second, the time for setting of the hearing and publishing the order to show cause for a name change is tight. (See Code Civ. Proc., § 1277(a).) The 8-week time frame sometimes makes it difficult, as a practical matter, for petitioners to accomplish publication and serve the non-consenting parent, if any, in a timely fashion. Accordingly, the time frame would be changed to 12 weeks, unless the court orders a different time.</p> <p>Third, problems have sometimes arisen with the requirements for service on non-consenting parents, especially when their address is unknown. The name change statutes would be amended to authorize courts for good cause, to waive personal service on the non-consenting parent and provide that notice by publication is sufficient.</p>

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Fourth, some additional changes would be made to Code of Civil Procedure section 1277(a). Currently, that section requires the court to “make an order reciting the filing of the petition, the name of the person by whom it is filed and the name proposed, and directing all persons interested in the matter to appear before the court at a time and place specified, . . . , to show cause why the application for change of name should not be granted.” Code of Civil Procedure section 1278(a) states that “the application shall be heard at the time designated by the court, only if objections are filed by any person who can, in those objections, show to the court good reason against the change of name.” And “[i]f no objection is filed the court may, without hearing, enter the order that the change of name is granted.”

To clarify and improve the procedure, section 1277(a) would be amended to expressly provide that any objection must be filed in writing at least two court days before the hearing. Specifically, the amended statute would require the court to “direct all persons interested in the matter to make known any objection he or she may have to the granting of the petition for change of name *by filing a written objection*, which includes the reasons for the objection, with the court *at least two court days before the matter is scheduled to be heard* and by appearing in the court at the hearing to show cause why the petition for change of name should not be granted. The order shall state that, *if no written objection is timely filed, the court may grant the petition without a hearing.*” (Emphasis added.)

To make Code of Civil Procedure section 1278 consistent with the proposed changes to section 1277(a), the last sentence of section 1278 (a) would be amended to include the following underlined words: “If no objection is filed at least two court days before the date set for hearing, the court may, without hearing, enter the order that the change of name is granted.”

As a result of these procedural changes, unnecessary hearings would be avoided and the expense of changing names would be substantially reduced for litigants and the courts.

Finally, some changes would be made to make the references to the “petition,” “application,” and “proceeding” consistent throughout the name change statutes.

The text of the proposed legislation is attached.

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Attachment

## Legislative Proposal

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Code of Civil Procedure sections 1275–1279.5 would be amended as follows:

1 **1275.** Applications for change of names must be determined by the superior courts.  
2

3 **1276.** (a) All applications for change of names shall be made to the superior court of the  
4 county where the person whose name is proposed to be changed resides, except as  
5 specified in subdivision ~~(e)~~(e), either (1) by petition signed by the person or, if the person  
6 is under 18 years of age, either by one of the person's parents, or by any guardian of the  
7 person, or if both parents are dead and there is no guardian of the person, then by some  
8 near relative or friend of the person or (2) as provided in Section 7638 of the Family  
9 Code.  
10

11 The petition or pleading shall specify the place of birth and residence of the person, his or  
12 her present name, the name proposed, and the reason for the change of name; ~~and~~  
13

14 (b) In a proceeding for a change of name commenced by the filing of a petition, if the  
15 person whose name is to be changed is under 18 years of age, the petition shall, if neither  
16 parent of the person has signed the petition, name, as far as known to the person  
17 proposing the name change, the parents of the person and their place of residence, if  
18 living, or if neither parent is living, near relatives of the person; and their place of  
19 residence.  
20

21 ~~(b)(c)~~ (c) In ~~an action~~ a proceeding for a change of name commenced by the filing of a  
22 petition; ~~(4)~~ if the person whose name is proposed to be changed is under 18 years of age  
23 and the petition is signed by only one parent, the petition shall specify the address, if  
24 known, of the other parent if living. If the petition is signed by a guardian, the petition  
25 shall specify the name and address, if known, of the parent or parents, if living, or the  
26 grandparents, if the addresses of both parents are unknown or if both parents are  
27 deceased, of the person whose name is proposed to be changed.  
28

29 ~~(2)(d)~~ (d) In a proceeding for a change of name commenced by the filing of a petition, if the  
30 person whose name is proposed to be changed is 12 years of age or over, has been  
31 relinquished to an adoption agency by his or her parent or parents, and has not been  
32 legally adopted, the petition shall be signed by the person and the adoption agency to  
33 which the person was relinquished. The near relatives of the person and their place of  
34 residence shall not be included in the petition unless they are known to the person whose  
35 name is proposed to be changed.  
36

37 ~~(e)~~(e) All applications for the change of the name of a minor submitted by a guardian  
38 appointed by the juvenile court or the probate court shall be made in the appointing court.  
39

40 ~~(d)~~(f) If the petition is signed by a guardian, the petition shall specify relevant  
41 information regarding the guardianship, the likelihood that the child will remain under

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the guardian's care until the child reaches the age of majority, and information suggesting that the child will not likely be returned to the custody of his or her parents.

**1277.** (a) Where ~~an action~~ a proceeding for a change of name is commenced by the filing of a petition, except as provided in subdivisions (b) ~~and (c)~~ (e), the court shall thereupon make an order reciting the filing of the petition, the name of the person by whom it is filed, and the name proposed, ~~and~~ The order shall direct all persons interested in the matter to appear before the court at a time and place specified, which shall be not less than ~~four~~ six or more than ~~eight~~ twelve weeks from the time of making the order, unless the court orders a different time, to show cause why the application for change of name should not be granted. The order shall direct all persons interested in the matter to make known any objection that they may have to the granting of the petition for change of name by filing a written objection, which includes the reasons for the objection, with the court at least two court days before the matter is scheduled to be heard and by appearing in the court at the hearing to show cause why the petition for change of name should not be granted. The order shall state that, if no written objection is timely filed, the court may grant the petition without a hearing.

A copy of the order to show cause shall be published pursuant to Section 6064 of the Government Code in a newspaper of general circulation to be designated in the order published in the county. If no newspaper of general circulation is published in the county, a copy of the order to show cause shall be posted by the clerk of the court in three of the most public places in the county in which the court is located, for a like period. Proof shall be made to the satisfaction of the court of this publication or posting, at the time of the hearing of the application.

Four weekly publications shall be sufficient publication of the order to show cause. If the order is published in a daily newspaper, publication once a week for four successive weeks shall be sufficient.

Where a petition has been filed for a minor by a parent and the other parent, if living, does not join in consenting thereto, the petitioner shall cause, not less than 30 days prior to the hearing, to be served notice of the time and place of the hearing or a copy of the order to show cause on the other parent pursuant to Section 413.10, 414.10, 415.10, or 415.40. If notice of the hearing cannot reasonably be accomplished pursuant to section 415.10 or 415.40, the court may order that notice be given in a manner that the court determines is reasonably calculated to give actual notice to the non-consenting parent. For good cause, the court may determine that publication of the order to show pursuant to this subdivision is sufficient notice to the non-consenting parent.

(b) Where the petition for a change of name alleges that the reason for the petition is to avoid domestic violence, as defined in Section 6211 of the Family Code, or stalking, as defined in Section 646.9 of the Penal Code, and the petitioner is a participant in the address confidentiality program created pursuant to Chapter 3.1 (commencing with

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Section 6205) of Division 7 of Title 1 of the Government Code, the petition, the order of the court, and the copy published pursuant to subdivision (a) shall, in lieu of reciting the proposed name, indicate that the proposed name is confidential and will be on file with the Secretary of State pursuant to the provisions of the address confidentiality program.

(c) ~~An action~~ A proceeding for a change of name for a witness participating in the state Witness Protection Program established by Title 7.5 (commencing with Section 14020) of Part 4 of the Penal Code who has been approved for the change of name by the program is exempt from the requirement for publication of the order to show cause under subdivision (a).

(d) Where application for change of name is brought as part of an action under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), whether as part of a petition or cross-complaint or as a separate order to show cause in a pending action thereunder, service of the application shall be made upon all other parties to the action in a like manner as prescribed for the service of a summons, as is set forth in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2. Upon the setting of a hearing on the issue, notice of the hearing shall be given to all parties in the action in a like manner and within the time limits prescribed generally for the type of hearing (whether trial or order to show cause) at which the issue of the change of name is to be decided.

(e) Where a guardian files a petition to change the name of his or her minor ward pursuant to Section 1276:

(1) The guardian shall provide notice of the hearing to any living parent of the minor by personal service at least 30 days prior to the hearing.

(2) If either or both parents are deceased or cannot be located, the guardian shall cause, not less than 30 days prior to the hearing, to be served a notice of the time and place of the hearing or a copy of the order to show cause on the child's grandparents, if living, pursuant to Section 413.10, 414.10, 415.10, or 415.40.

**1278.** (a) Except as provided in subdivisions (c) and (d), the petition or application shall be heard at the time designated by the court, only if objections are filed by any person who can, in those objections, show to the court good reason against the change of name. At the hearing, the court may examine on oath any of the petitioners, remonstrants, or other persons, touching the petition or application, and may make an order changing the name, or dismissing the petition or application, as to the court may seem right and proper.

If no objection is filed at least two court days before the date set for hearing, the court may, without hearing, enter the order that the change of name is granted.

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(b) Where the provisions of subdivision (b) of Section 1277 apply, the court shall not disclose the proposed name unless the court finds by clear and convincing evidence that the allegations of domestic violence or stalking in the petition are false.

(c) Where the application for a change of name is brought as part of an action under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), the hearing on the issue of the change of name shall be conducted pursuant to statutes and rules of court governing those proceedings, whether the hearing is conducted upon an order to show cause or upon trial.

(d) Where the ~~application~~ petition for a change of name is filed by a guardian on behalf of a minor ward, the court shall first find that the ward is likely to remain in the guardian's care until the age of majority and that the ward is not likely to be returned to the custody of his or her parents. Upon making such findings, the court shall consider the petition and may grant the petition only if it finds that the proposed name change is in the best interest of the child.

1278.5. In any proceeding pursuant to this title in which a petition has been filed to change the name of a minor, and both parents, if living, do not join in consenting thereto, the court may deny the petition in whole or in part if it finds that any portion of the proposed name change is not in the best interest of the child.

1279.5. (a) Except as provided in subdivision (b), (c), (d), or (e), nothing in this title shall be construed to abrogate the common law right of any person to change his or her name.

(b) Notwithstanding any other law, no person imprisoned in the state prison and under the jurisdiction of the Director of Corrections shall be allowed to file ~~an application~~ a petition for change of name pursuant to Section 1276, except as permitted at the discretion of the Director of Corrections.

(c) A court shall deny ~~an application~~ a petition for a name change pursuant to Section 1276 made by a person who is under the jurisdiction of the Department of Corrections, unless that person's parole agent or probation officer grants prior written approval. Before granting that approval the parole agent or probation officer shall determine that the name change will not pose a security risk to the community.

(d) Notwithstanding any other law, a court shall deny ~~an application~~ a petition for a name change pursuant to Section 1276 made by a person who is required to register as a sex offender under Section 290 of the Penal Code, unless the court determines that it is in the best interest of justice to grant the ~~application~~ petition and that doing so will not adversely affect the public safety. If ~~an application~~ a petition for a name change is granted for an individual required to register as a sex offender, the individual shall, within five working days, notify the chief of police of the city in which he or she is

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1 domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area,  
2 and additionally, with the chief of police of a campus of a University of California or  
3 California State University if he or she is domiciled upon the campus or in any of its  
4 facilities.

5  
6 (e) For the purpose of this section, the court shall use the California Law Enforcement  
7 Telecommunications System (CLETS) and Criminal Justice Information System (CJIS)  
8 to determine whether or not an applicant for a name change is under the jurisdiction of  
9 the Department of Corrections or is required to register as a sex offender pursuant to  
10 Section 290 of the Penal Code. Each person applying for a name change shall declare  
11 under penalty of perjury that he or she is not under the jurisdiction of the Department of  
12 Corrections or is required to register as a sex offender pursuant to Section 290 of the  
13 Penal Code. If a court is not equipped with CLETS or CJIS, the clerk of the court shall  
14 contact an appropriate local law enforcement agency, which shall determine whether or  
15 not the ~~applicant~~ petitioner is under the jurisdiction of the Department of Corrections or  
16 is required to register as a sex offender pursuant to Section 290 of the Penal Code.